

REMARKS

Claims 1-5 and 8-12 are all the claims pending in the application.

Claims 1-5 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Li et al, U.S. Publication No. 2002/0160113, essentially for the reasons of record.

Claims 8-12 are rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Li et al, U.S. Publication No. 2002/0160113, essentially for the reasons of record.

In response to the arguments and amendments to the claims in the Amendment filed on January 2, 2004, the Examiner indicates that the rejections are maintained as proper based on the alleged disclosure in the reference of the same reaction gas as claimed flowing from nozzles 34, 34a and 56 in Figure 3, using different flow rates from a mixture of gases from source 58 in Figure 3. The Examiner further states that the user would be able to optimize different start times by using different controllers for the reaction gases for the desired results.

Applicants respectfully traverse the rejections as improper.

Applicants respectfully submit that it is well settled that in order for a reference to anticipate the claimed invention, the reference must disclose each and every element recited in the claim. Connell v. Sears, Roebuck & Co., 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983) ("Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim"). In this case, Li et al does not disclose the gas supply timing of the claimed invention. Specifically, Li et al does not disclose starting a supply of a reaction gas at a first

flow rate in a first step (a) and after the first step (a), starting a supply of the reaction gas at a second flow rate in a second step (b) as recited in claim 1.

The Examiner recognizes that Li et al does not specifically teach this element of the claims and asserts that the disclosed apparatus of Li et al "allows the user to optimize different start times by using different controllers for the reaction gases for the desired results" (citations omitted). However, an anticipation rejection cannot be properly based on what may result if conditions were optimized. See *In re Rijchaert*, 28 U.S.P.Q.2d 1955, 1957 (Fed. Cir. 1993) stated that the "mere fact that a certain thing may result from a given set of circumstances is not sufficient [to establish inherency.]" See also, MPEP 2112.

Anticipation can be shown if a structure in the prior art *necessarily* functions in accordance with the limitations of a process or method claim." [Emphasis supplied.] *In re King*, 231 U.S.P.Q. 136,8 (Fed. Cir. 1986). Such is not the case in this instance, since the applied reference does not disclose or teach the step characterizing the inventive method of claim 1 and since the applied reference does not *necessarily* operate in accordance with the limitations of claim 1. In short, the Examiner has not established that Li et al includes each and every feature of the claimed invention. Thus, Li et al does not anticipate the claimed invention and the rejection is improper.

Further, Applicants respectfully submit that the claimed invention is not even obvious over Li et al since Li et al does not teach or suggest the timing of supplying the reaction gases as discussed above and there is no motivation to modify the disclosure of Li et al with a reasonable expectation of success in achieving the claimed invention. As previously pointed out, at best, based upon the disclosure of Li et al, one of ordinary skill in the art may consider that the gas is supplied

from the center nozzle 56 and the peripheral nozzles 34 and 34(a) at the same time, or that the gas is first supplied through the peripheral nozzles 34, second through peripheral nozzle 34(a) and third through center nozzle 56 above the substrate in view of Figure 3, which is different from the claimed invention which requires starting a supply of a reaction gas at a first flow rate to form an initial film on a center region of a wafer via a first nozzle provided on the center of the chamber followed by starting a supply of the reaction gas at a second flow rate via second nozzles provided on the side walls of the chamber, while the supply of the reaction gas at the first flow rate continues.

Accordingly, one of ordinary skill in the art would not have had a reasonable expectation of achieving the claimed invention and therefore the claimed invention is not rendered obvious over Li et al.

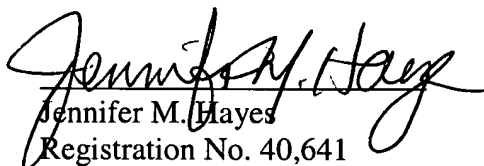
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Response under 37 C.F.R. § 1.111
U.S. Application Ser. No. 09/832,093

Attorney Docket No. Q64059

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Jennifer M. Hayes
Registration No. 40,641

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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